

Presentment Date June 11, 2018 at 12:00 p.m. (Prevailing Eastern Time)
Objection Deadline: June 11, 2018 at 11:00 a.m. (Prevailing Eastern Time)

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Co-counsel to Reorganized Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re: : Chapter 11
:
SUNEDISON, INC., *et al.*, : Case No. 16-10992 (SMB)
:
Reorganized Debtors.¹ : (Jointly Administered)
:
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**NOTICE OF PRESENTMENT OF
STIPULATION AND AGREED ORDER REGARDING
CLAIM NOS. 6369 AND 6370 FILED BY KOHL'S DEPARTMENT STORES, INC.**

PLEASE TAKE NOTICE that SunEdison, Inc. ("SUNE") and certain of its affiliates, the above-captioned Reorganized Debtors (as defined in the confirmed *Second Amended Joint Plan of Reorganization of SunEdison, Inc. and its Debtor Affiliates* [Dkt. No. 3735]) (collectively, the "Debtors"), will present the proposed *Stipulation and Agreed*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926); Terraform Private Holdings, LLC (5993); SunEdison Products, LLC (3557); Hudson Energy Solar Corporation (1344); SunE REIT-D PR, LLC (2171); First Wind Energy, LLC (5519); First Wind Holdings, LLC (4445); Vaughn Wind, LLC (9605); Maine Wind Holdings, LLC (4825); SunEdison International Construction, LLC (6257); and EchoFirst Finance Co., LLC (1607) (collectively, the "Debtors" and, as reorganized, the "Reorganized Debtors"). The address of the Debtors' corporate headquarters is Two City Place Drive, 2nd floor, St. Louis, MO 63141.

Order Regarding Claim nos. 6369 and 6370 Filed by Kohl's Department Stores, Inc. (the "Stipulated Order") to the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, for signature on **June 11, 2018 at 12:00 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Stipulated Order, with a proof of service, is filed with the Clerk of the Court, and a courtesy copy is delivered to the undersigned counsel and to the chambers of the Honorable Stuart M. Bernstein so as to be received by **June 11, 2018 at 11:00 a.m. (Prevailing Eastern Time)**, there will not be a hearing on the Stipulated Order and the Stipulated Order may be signed.

PLEASE TAKE FURTHER NOTICE that if a written objection is timely filed, a hearing will be held to consider the Stipulated Order on a date and time to be set by the Court.

Dated: New York, New York
May 23, 2018

SUNEDISON, INC. et al,
Reorganized Debtors
By their Co-Counsel:
TOGUT, SEGAL & SEGAL LLP
By:

/s/Frank A. Oswald
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UNITED STATES BANKRUPTCY COURT
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SUNEDISON, INC., *et al.*, : :
: : Case No. 16-10992 (SMB)
Reorganized Debtors. : :
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**STIPULATION AND AGREED ORDER REGARDING
CLAIM NOS. 6369 AND 6370 FILED BY KOHL'S DEPARTMENT STORES, INC.**

This stipulation and agreed order (this "Stipulated Order") is entered into by and between (i) the above-captioned Reorganized Debtors (as defined in the confirmed *Second Amended Joint Plan of Reorganization of SunEdison, Inc. and its Debtor Affiliates* [Dkt. No. 3735]) (collectively, the "Debtors");¹ and (ii) Kohl's Department Stores, Inc. ("Kohl's" and, together with the Debtors, the "Parties").

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926); TerraForm Private Holdings, LLC (5993); Hudson Energy Solar Corporation (3557); SunE REIT-D PR, LLC (5519); SunEdison Products, LLC (4445); SunEdison International Construction, LLC (9605); Vaughn Wind, LLC (4825); Maine Wind Holdings, LLC (1344); First Wind Energy, LLC (2171); First Wind Holdings, LLC (6257); and EchoFirst Finance Co., LLC (1607). The address of the Debtors' corporate headquarters is Two CityPlace Drive, 2nd floor, St. Louis, MO 63141.

RECITALS

1. The Chapter 11 Cases.

A. Beginning on April 21, 2016 (the "Petition Date"), SunEdison, Inc. ("SUNE") and certain of its affiliates commenced voluntary cases (collectively, the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

B. On April 29, 2016, the United States Trustee formed an Official Committee of Unsecured Creditors in the Debtors' Chapter 11 Cases (the "Committee").

C. No trustee or examiner has been appointed in the Debtors' cases.

D. On March 28, 2017, the Debtors filed their *Joint Plan of Reorganization of SunEdison, Inc. and its Debtor Affiliates* [Dkt. No. 2671] (as amended, the "Plan") and corresponding disclosure statement [Dkt. No. 2672], each of which has been amended. Pursuant to an Order of this Court dated June 13, 2017 [Dkt. No. 3319], the Debtors' Amended Disclosure Statement dated as of June 12, 2017 was approved [Dkt. No. 3314]. The Plan was confirmed by Order of this Court dated July 28, 2017 [Dkt. No. 3735]. The Plan's Effective Date (as defined in the Plan) occurred on December 29, 2017 (the "Plan Effective Date").²

E. The Plan provides for, *inter alia*, the establishment of a trust (the "GUC/Litigation Trust") that, as of the Plan Effective Date is, among other things, responsible for continuing and completing the claim reconciliation and objection process as to general unsecured claims.

² See Dkt. No. 4495.

2. Kohl's Claims Against the Debtors.

F. Kohl's and Debtor NVT Licenses, LLC ("NVT") are party to an Operation and Maintenance Agreement dated August 31, 2009 (the "O&M Agreement"), pursuant to which NVT agreed to provide operation and maintenance services for photovoltaic systems located on certain of Kohl's premises. Additionally, Kohl's and Debtor SunEdison, LLC ("SunEdison") are party to an Omnibus Agreement dated September 10, 2009 (the "Omnibus Agreement" and, together with the O&M Agreement, the "Agreements"), pursuant to which SunEdison guaranteed NVT's obligations under the O&M Agreement.

G. Kohl's filed the following claims in the Chapter 11 Cases (collectively, the "Claims"):

- Claim No. 6369 against NVT in the amount of \$2,918,340 based on NVT's alleged defaults under the O&M Agreement; and
- Claim No. 6370 against SunEdison in the amount of \$2,918,340 based on SunEdison's obligations under the Omnibus Agreement.

H. Kohl's asserts that a portion of the Claims might be entitled to administrative expense priority. The Debtors disputed the priority of the Claims.

I. On November 21, 2017, the Debtors filed the *Twenty-Ninth Omnibus Objection to Disallow and Expunge Certain Duplicate Claims* [Docket No. 4353] (the "Duplicate Claims Objection"), pursuant to which the Debtors sought, among other things, to disallow and expunge Claim No. 6370 as duplicative of Claim No. 6369.

J. On December 27, 2017, the Debtors filed a motion to reclassify Claim No. 6369 as a general unsecured claim [Docket No. 4482] (the "Motion to Reclassify"). A hearing to consider the Motion to Reclassify is scheduled for May 15,

2018. Counsel for Kohl's has indicated that it does not intend to oppose the Motion to Reclassify.

K. On January 11, 2018, Kohl's filed a response to the Duplicate Claims Objection [Docket No. 4525] (the "Response") asserting that the Claims were not duplicative of each other. Based upon further review and reconciliation of the Claims, the Debtors withdrew the Duplicate Claims Objection, solely as to Kohl's, without prejudice. *See* Docket No. 4569

3. The Settlement.

L. The Parties have continued their discussions regarding the priority of the Claims. Although the Parties have not completed their reconciliation efforts, the Parties have agreed that, subject to the conditions set forth herein, the Claims should be reclassified as general unsecured claims.

NOW, THEREFORE, based on the foregoing, it is stipulated and agreed by and between the Parties hereto as follows:

1. This Stipulated Order shall be effective upon the date a final, non-appealable order is entered by the Bankruptcy Court approving this Stipulated Order (the "Settlement Effective Date").

2. The Claims (Claim Nos. 6369 and 6370) shall be reclassified as general unsecured claims on the Settlement Effective Date.

3. The rights of the Debtors and the GUC/Litigation Trust to assert further objections to the Claims, including to seek disallowance and expungement of same, are fully preserved.

4. For the avoidance of doubt, Kohl's waives and releases any right to assert that the Claims are administrative expenses under Bankruptcy Code section 503 or entitled to priority under Bankruptcy Code section 507.

5. Upon the Settlement Effective Date, the Motion to Reclassify shall be deemed withdrawn as settled.

6. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Claim Objection.

7. Each of the Parties further agrees to execute documents, instruments, or conveyances of any kind in mutually agreed (such agreement not to be unreasonably withheld) form and substance which may be reasonable, necessary or advisable to carry out any of the transactions contemplated hereunder and to cooperate with the other Party in connection with the foregoing.

8. By their signature hereto, each of the undersigned (a) represents that it has been duly authorized to enter into this Stipulated Order, in the case of the Debtors, subject to the Bankruptcy Court's approval hereof, and (b) requests that the Bankruptcy Court approve and so order this Stipulated Order.

9. The terms of this Stipulated Order shall be binding on the Parties and their respective successors and assigns, including any trustee, plan administrator, or similar party that may be appointed in the Debtors' bankruptcy proceedings.

10. This Stipulated Order may be signed in counterpart originals as if signed in one original document.

11. The Debtors' court-appointed claims and noticing agent is directed to reflect the reclassification of the Claims on the claims register in these Chapter 11 Cases.

12. This Stipulated Order shall be immediately effective upon its approval and entry by the Bankruptcy Court in accordance with the terms set forth herein. The fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable, is hereby waived.

13. The Bankruptcy Court shall retain original and exclusive jurisdiction to interpret, implement, or enforce this Stipulated Order, including, without limitation, any disputes that may arise between or among the parties to this Stipulated Order regarding the interpretation, implementation, or enforcement of any terms hereof.

Dated: May 23, 2018

SUNEDISON, INC., ET AL.
Reorganized Debtors
By their Co-Counsel
TOGUT, SEGAL & SEGAL LLP

By:

/s/Frank A. Oswald
FRANK A. OSWALD
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New York, New York 10119
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KOHL'S DEPARTMENT STORES, INC.
By its Counsel
THE LAW OFFICE OF WILLIAM J. FACTOR,
LTD.

By:

/s/Sara E. Lorber
SARA E. LORBER
A Partner of the Firm
105 W. Madison Street, Suite 1500
Chicago, Illinois 60602
(312) 878-6976

SO ORDERED this ____ day of June 2018
in New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE